Advocate (Anonymous)
Brock
Thursday, September 16, 2010, 10:30 AM EST

As an advocate, I assisted people with claims and sit in on CATIs. In that arena, I have nothing but praise: the people from NIOSH are very cordial, some have gone out of their way, actually stopped the interview because some things were missing in the file.

There are so many questions asked of former workers, especially surviving spouses, siblings, etc. So many questions are unanswerable because there is no way they could know, they have no way of responding effectively.

Workers were held under secrecy. Things that are almost classified information in some cases.

They're very high tech questions.

Some former workers can't even remember things themselves.

NIOSH gets a black eye because of wrong information from DOL…there's a certain degree of unfairness…NIOSH is doing the best with what they've got…I help with personal experience as an extra pair of ears…If the person doesn't have a subject matter expert on the site, or Denise, or me, or someone who worked at the site, the questions really can't be answered.

That's something that needs to be looked at.

Sometimes, things get lost. When someone refers to a certain document or something that should be in the file, it's not always there.

Sometimes, FOIA requests aren't responded to in a timely manner or at all.

I had a request denied because it was determined that I was using it for personal gain. Nothing could be further from the truth.

Claimant favorability is talked about a lot. When a technical document changes, it may not be favorable for the claimant.

I know they use efficiency measures because it speeds things up. You're encouraged to turn in more things because it helps the claim, but their next POC number is lower. It's not the claimant's fault.

Someone had like [REDACTED], the POC was only [REDACTED]%. He got [REDACTED], and his POC went down to [REDACTED]% because then NIOSH actually does the dose reconstruction. That's confusing to people.

It gives NIOSH a black eye because it's hard for people to understand.

Someone should see if there's another way to explain to people. When they're getting these lower numbers, it's really difficult to explain. I've been to the IREP trainings where people are helping claimants. There needs to be a better explanation.

The efficiency measures are almost taking away due process.

I've met the NIOSH people at the Board meetings --they will help you when you talk to them. But not everyone can go to the Board meetings. I just call and talk to the NIOSH people I know –not everyone knows can do that. Normally, during the CATIs, it's just someone calling to ask them questions.

Put it in layman terms. Spell it out to me so I can help the claimants. Generate an online tutorial for representatives, an explanation of dose reconstruction, or at least give them a number to call.

Make the dose reconstruction more open to the needs of the claimants.
Some people can understand and could appreciate the trainings. Go a step further. There could be some form of instructional tool, maybe a CD…there's a NIOSH CD on the effects of toxic substances on the human body.

Example: a flow chart. I draw a triangle: at the top: diagnosed claim medical condition; then job classification: years, site, buildings, campaigns; then databases: Site Exposure Matrix (SEM), hazmat, pubmed, etc
Flow diagram: Is this going to DOL for E or NIOSH for B, etc.

NIOSH Cincinnati says they exempt themselves, but they have so many like Stu that had been radiation contamination management personnel. That's very conflicted or biased. Even though they're not working on individual claims, when they make programmatic decisions, that affects everyone, including Fernald employees. I know they called in top notch professionals, but there's conflict. For the SECs, how can they go back and say "Our rad con manual was bad. It was flawed" They're not going to do that. We've got the fox guarding the hen. This has been brought up many times at Board meetings. NIOSH in DC needs to look at that --who's in the catbird seat. It's not a level playing field. It needs more neutrality.

Dose reconstruction for prostate cancer:
The target organ changed to the bladder. That's not claimant favorable. It takes so much more dose to get to the bladder than the genitalia. I was told that the needed dose to the genitalia would've been so minimal that the majority of claims would've met the POC threshold. Let's face it, a lot of men over 60 have prostate cancer. It was explained to me in kind of a scientific manner, but between the lines, that's how I read it. If it's rational, I'll eventually buy it, but right now, I don't buy it. It doesn't seem claimant favorable.

You see "assumed" many times in dose reconstruction letters. When we file a claim, we can't assume that someone has a medical condition. We can't assume anything. One could easily "assume" that it's "as likely as not." Yet, in a letter, I saw "assumption" or 'assumed" nine times. How can they use coworker model data, assume this, assume that?

Being a [REDACTED], I think NIOSH is being guilty of stereotyping in some degree. You can't just say all workers with the same job title were exposed to the same degree. Certain ones worked in certain projects that may have had more or less exposure. So coworker model data isn't accurate. NIOSH shouldn't being stereotypical in claims. There may have been occasion for you to go on the process site even if you're an office

clerk. We've got clerks coming down with cancers and various illnesses. But NIOSH isn't taking that into consideration.

Brock: Many times, the job title doesn't reflect the job.

The "mail boy" was also carrying products, going in and out of sites. "Record clerk" should've been part of the SEC. Only 20 ft from an incident. Part of the job was going into the process area, but DOL wouldn't recognize that.

It's not always NIOSH. Just one of those things that need to be tweaked.

The records kept on workers were very shoddy, numbers were changed, etc. In the case of *Day vs NLO* [National Lead Ohio], ...that's what spurred Fernald II settlement...That being said, the SEC petition that was filed 12/2005, it qualified Apr or May 2006. We've been since then back & forth like a tennis match. NIOSH has bounced back to SC&A. The subcommittee formed under Board which meets periodically every 3 or 4 months. I don't understand why this petition is taking a back seat to everything else; Rocky Flats was an exception –they milked that for a long time. The Fernald subcommittee comes to Cincinnati when they meet. We've gone in person to the subcommittee. I met with our Congressman in southwest Ohio. He was taken aback that it's taken this many years. He and Senator Brown of Ohio introduced identical language.

The SEC petition needs to be qualified by NIOSH, and they're the ones doing the dose reconstruction, so I see a lot of conflict. We have Fernald people like Jim who was one of the rad con managers who had a lot to say then. Now he's one of the subject matter experts at NIOSH. It's difficult for us to believe that there isn't some sort of bias. He's not going to go against the grain on our SEC petition. Nothing personal on him. I like his way of thinking, he's a very intelligent man.

The NIOSH health hazard evaluation team came to our site. They had four questions, looking at can remediation workers be identified, is the data adequate, can it be linked, can hazard surveillance be conducted now or in the future? Looked at 1989 when it ceased to 2006. Very small cohort, including building trades. Can they use this data in a dose reconstruction? The answer to all four questions is a no. [REDACTED] submitted this to the Board and read it in during the public comment period. It fell on deaf ears. I was contacted by NIOSH to use this because they saw our plight, the direction our SEC was headed. I think this needs to get a little stronger attention.

Will this 10 year review report be made available to public?

I wonder about the costs of dose reconstruction and all the contractors making millions of dollars to deny claims.

Something that NIOSH did that I think is very favorable: Claimants get a packet of materials. It includes a handout with the 14 steps, with a check mark showing the step you're at.

At the point of getting information, they can call a coworker or do something to try to jog their memory.

DOL is also good in helping track people's activities of daily living.

On a scale of 1 to 10, 10 being the most difficult to understand, I'd have to place the information as a 9 or 9.5, extremely complex.

The IREP is extremely complex, I don't know if there's something else they could use… They compare Nagasaki's high, acute exposure in Japan to the chronic, low exposures here, but they're different compounds and the complexities of toxic substances or chemicals could enhance the radiation.

The SEC petition used many documents from the Federal lawsuit case. It spelled out that the record keeping wasn't the best. The data NIOSH is using to do dose reconstruction is the same data that was not accurate and was frivolous. I'm can't challenge the methodology of the science, IREP, dose reconstruction, etc., but I can challenge the reliability of that data. The court document says this was bad information.

Andrew Evaskovich, Advocate and SEC Petitioner
Wednesday, September 15, 2010, 6:00 PM EST

The SEC petitioner & [REDACTED] ask me to help with certain issues that they don't understand or need information on where a person worked or exposures, collecting environmental reports on LANL, etc. I usually help on the appeal process and a little on some who're starting out on a claim. I help put them in technical areas so they can get credit for working there.

I've helped with claimants, explaining the dose reconstruction reports. I don't think most of the claimants understand them. The structure of the reports, the long introduction –I can understand why it's there, but it takes a number of pages to get to the meat of the report.

Information that should be included in the report: the data that they applied and didn't apply to the dose reconstruction.

> Some reports explain, e.g., "The dose reconstruction didn't apply ambient because this other data was used instead. We used missed dose for these specific years, etc." All the reports should have this information.

The dose reconstruction reports don't always say if they applied miss or ambient dose.

Some of the data sets have been very small: one sample for bioassay; for [REDACTED], six samples altogether. In that case, they said they used internal data, but [REDACTED] doesn't recall having had any other than two urine samples. The way [REDACTED] explained how they did it, it didn't make sense: just a sample from a bottle…The RCT monitored for tritium while the sample was in the bottle.

The dose reconstruction reports just say "We couldn't find any record of it, so we didn't account for it in the dose reconstruction." Just because they didn't find the records, doesn't mean that it didn't happen.

> NIOSH relies on the records at the site, even though they're supposed to take into account the claimants' statements

They apply lab workers' data to support services workers, but the support service workers weren't wearing PPE. So the data they're applying to do the dose reconstruction is invalid.

> They said that all they had was what I alleged in my petition. But, they did have information on support workers being different. It wasn't just from my petition, but they still didn't take that information into account. NIOSH gathered this information during the Site Profile Outreach meetings with Support Services Workers, as well as meetings for the petition evaluation.

I don't think NIOSH has done its homework to determine source terms. They're just looking at the key areas of LANL, but the other areas produce quite a bit of environmental releases. Even the National Academies of Science said they (LANL)

haven't accounted for all the sources. So if NIOSH is relying on LANL data, they don't have all the sources.

It's been my experience, whenever I'm dealing with the people at DCAS, they're always friendly and helpful; I've always had the ability to get my questions answered. I never talk to the health physicists, so I don't know if they've been helpful to claimants, but the people I meet at the Board meetings have always been very helpful. I personally can't say anything negative about customer service from that aspect.

In accessing documents on websites (guidelines, TIBs), I've found that the website has been helpful. I check the website daily to see if any new information pertains to me. The transcripts from Board meetings have been helpful. But not everyone is computer savvy or has access to internet as far as good downloads. A lot of workers are retired, senior citizens, and may not be into computers. So that isn't really helpful. And it's technical information, so they may not understand it.

The timing of the CATI is usually when people are getting treatment, radiation therapy -- it's a lot more difficult for them to remember. We've tried to arrange time go over the questions beforehand, tried to refresh their memories on the information to be given. I learned from [REDACTED] to show them a map to help them remember and get credit for more exposures. We've added information during appeals that people didn't remember before.

The interviews follow the form, which is convenient, but not good interview technique – they don't try to involve the senses, emotions, to stir the memory. They tend to be pretty dry, which isn't a rich environment for extracting information, trying to get the workers to remember the places where they worked. Especially for support services workers, since they go all over. The workers may consider something a small thing, but it may be beneficial to get credit for exposures. I'm not sure how to fix that to make it work for both sides. I know it takes a lot of time to conduct dose reconstructions. Maybe something we advocates need to work on to assist people.

The petition evaluation report wasn't finalized until way over the 180 day deadline because of a delay in acquiring data. It was supposed to have been by November, but wasn't until end of Jan.

> I didn't get it until February. I had only 2 weeks before the Board meeting when it was presented. I could've prepared a better presentation for the Board meeting.

I think I did one of the more in depth petitions…I received a number of compliments. I planned for it to be a big project, did my homework, was prepared... I understand that resources have to be allocated: Board members have other things to work on, etc…others may have had difficulty… Personally, I've been pretty satisfied with the process. Mine was fairly easy to qualify because NIOSH had already said it needed to look at more years. They asked for a couple of clarifications, so I had to do an addendum, which wasn't a problem.

I understand there's a records issue, but if you don't have the records, then grant the SEC.

It shouldn't have taken long for the SC&A review report to be released since there was no privacy act information. However, the publishing of transcripts has gotten better in the last couple of years.

I've talked to Ted Katz about announcing locations and agendas so it's easier to book travel. More than a month out would be helpful, especially for advocates. I travel on my own time and expense. If NIOSH could get the contracts with the hotels sooner, that would be helpful. That would be a cost benefit for NIOSH as well, saving flight costs. But, I understand there are guidelines concerning procurement and dealing with hotels.

Sometimes, claimants don't understand what information they're being asked for. I think explaining this is the reason that we need it for. Stuff gets missed and you end up redoing the dose reconstruction.

Laurence Fuortes MD, petitioner and advocate, Professor of Occupational and Environmental Health and Internal Medicine, University of Iowa
Brock
Monday, Sept 13, 2010, 10am EST.

Could make process more humane and more efficient. SEC process can be streamlined.

Bureaucratically laden, some NIOSH and DOL efforts not based on the decision making process nor efficiency of claims processing, adding time & concern to the claimant

> Example: Cigarette smoking history has no bearing on the dose reconstruction, yet it is asked. This adds concern & fear to the respondent. Why are claimants asked about this if it's not used in the dose reconstruction?
> Claimants get questioning from the DOL resource center, then more questions from NIOSH.

Shouldn't ask claimant questions just to check off a box in the process; should ask about things only if they are relevant to the decision making.
The process is stalled because of this.

People who are covered by SECs and have confirmed diagnosis shouldn't be having their dose reconstructions done, making them wait.

> For SEC members in part B who have a medical diagnosis and verified employment, the DOL resource center does not need to go over their work history and exposure, and NIOSH does not have to ask about duration of work/job titles/etc. Only the 250 days employment in a covered facility and covered cancer are at issue.

Why does NIOSH do more interviews with survivors who have just lost a loved one after their initial claim was approved but who died before the claim process was finalized?

> Brock: NIOSH wants to make sure that everyone gets their due process.
> Wouldn't want someone to say that they had something to add, but nobody called them.
> Fuortes: They can always provide comments; however, NIOSH and DOL should not hold up the claims process nor subject the claimant to additional questioning.

If a claimant already got a POC>50%, then NIOSH shouldn't go back to get more interviews, especially if that makes the POC<50%.

> Brock: NIOSH may need to do that if there is updated information from DOL
> Fuortes: Then it should be clear when and why any additional dose reconstructions are performed AFTER a POC>50%

The delay of seven years at Pantex is unacceptable.

> Why is NIOSH still doing worker interviews of workers from Pantex after having agreed this is the sister plant of IAAP? It's the same as Burlington, so shouldn't be going through all this. Why is NIOSH still delaying getting this before the Board?

Decisions should be independent and science based, not political.

Example: IAAP & Mallinckrodt: The OMB passback memo made it obvious that there were discussions w/DOE, DOJ, OMB and that there were political considerations.

Discussions should be made transparent to the public.

Political infighting with SC&A contracts

Scientific and financial arguments are going on behind the scenes.

Squabbles should not be to the detriment of the petitioners.

NIOSH has said that Pantex delays are because of security issues; this may serve to decrease transparency and may be obstructionist.

The rationale of protecting national security interests and not being able to accept the history of workers is part of the pattern of obstruction of the SEC process and has intimidated workers.

Restraints on evidence

Five years ago, NIOSH started requiring signed affidavits to verify claimants and their stories. NIOSH gets information without affidavits from health and safety officers...don't know if they're also put in private rooms and intimidated like workers are...

NIOSH doesn't require affidavits when they talk to health physicists or program administrators or other sources of history.

Examples of intimidation

"Since you're going to be talking about potential national security issues, we need to take you to a private room."

It's tactless, a power ploy, intimidating. The process is clearly designed as "We have authority; you guys don't."

DOD and DOE say that the things that can't be discussed are masses, geometries, locations, building names or numbers in association with materiel or process etc. For this SEC process, workers are talking about exposures. That's not high security. And it's about work that was done 40 years ago.

At Pantex, some are still working at the site. They don't want the employer to know who said what about historical exposures and risks. They're afraid for their well being and for their children. It's a relatively small community, so they're also concerned about their children's employment.

NIOSH staff have overtly stated the following bias BEFORE obtaining worker histories or reviewing Tiger Team reports for Pantex: "We start with the assumption that this was a safe workplace and there were no errors or missing information. We trust our information. You have to provide & prove any conflicting information."

It should be the opposite: if there is no information on the waste in streams or monitoring of the streams, the EPA wouldn't use that as evidence that there was no waste and assume that there was no waste. All it indicates is evidence of lack of good record keeping and usually reflects poor hygiene.

Decisions should be weighted in the context of worker histories, i.e., what workers tell NIOSH, if there is no data.

NIOSH has health physicists and boxes of data and no transparency with community stakeholders about what is known or unknown from primary sources.
Petitioners do not and did not have access to these data.
Workers had worked under "need to know."

> They don't know how many thousands of pounds of uranium or other substances were used. Their knowledge was limited

Anything that's not affected by national security or confidentiality should be on a common website. NIOSH shouldn't be using information that's not available to petitioners (except security).

> Globalsecurity.org etc have a lot of this data available.

Conflict of interest
Contractors presumably get paid based on the number of dose reconstructions done, so there could be pressure within the system to conduct dose reconstructions even if they are futile.

> Example: People with six or seven skin cancers who worked for 20 years are likely to be compensated, but if people with only one skin cancer never get compensated, then why are dose reconstructions being done for them?

Algorithms could be developed covering common scenarios to streamline the process and save time, money, and confusion.
Why does NIOSH push for people to pursue dose reconstructions for things that claimants haven't brought up?

> If you already know that the data shows that the POCs will be less than 50%, then don't subject the person to the process.

Salaried scientists at NIOSH –not contractors-- could put some thought into what to do about it.
Many SEC members are going/have gone through dose reconstructions that seem irrelevant and don't add anything except add to the coffers of the contractors.

> Shouldn't be delaying Part B claims.

NIOSH doesn't abide by the same rules that it imposes on SEC petitioners.

> NIOSH and DOL write letters giving times constraints for responses to petitioners and claimants, but they take all the time in the world to generate such letters.
> NIOSH gives little time for response from petitioners --some are widows going through recent loss or people dying of cancer.

Instead of assisting people with SECs, DCAS had denied petitions, then being made to reverse the denials during administrative review.

Petitioners and the community are not advised in a timely fashion about Board meetings.

> May be just one week or two notice regarding agendas
> There's no excuse for that to not be dramatically improved

It's been taking a long time to set up the Board agenda. Should give more notice when conveying to the public and the media.

NIOSH could have a position to help the agency interact with the community and have the responsibility for keeping in touch with petitioners and the community as well as truly assisting with the SEC process.

Positives:

Denise Brock requesting administrative reviews and special project review for petitions has been an invaluable service.

She's an army of one. Needs more collaboration in between agencies.

Identify issues, then over time, Denise pushes to get things changed.

In an ideal world, there wouldn't be a perception of "us versus them." Personally I have repeatedly been made to feel like a persona non grata (less so by NIOSH recently but more so by DOL recently). We should be working with DOL as coalitions of agencies and individuals figuring out what's the right thing to do.

The Board doesn't have capacity to deal with that.

DOL has become a bit more collegial, attending townhall meetings.

People such as myself, Former Medical Worker Medical Screening Program Principal Investigators (FWP PIs), and other persons with professional expertise regarding workers' histories, exposures, health experiences and claims and SEC petition experiences would like to work "with" rather than "counter to" colleagues at NIOSH & DOL.

There are many people who have expertise with this industry who could help

I personally offer to work with NIOSH in any situation possible on DOE worker health issues.

Unless there is a collegial process, then it feels like you're just tossing in your two bits when and where they aren't wanted.

Could have a community review board which gets input from academics and former workers on science and other issues.

Have a review and facilitation process that is more than just Denise.

Her success appears to be partly due to having a recognized administrative role and personal credibility and relationships.

Could formalize the process: Have DOL, Board, communities forums for discussion.

In particular, when there are decisions to be made.

If someone is being obstructionist or a cog in the administrative wheel, there should be someone who can facilitate the process to get on with it and change the status quo. Is it possible for one person to affect (delay or speed up) the process of an SEC petition such as Pantex? Could that question be looked at as this has been a problematic SEC petition process?

Have a means to collect information and have community input.

I also ask, "What are the next steps from NIOSH? If and how will issues raised from such a review be considered by persons in positions of authority to make changes to the status quo?"

Karen Johnson Advocate and SEC Petitioner
(joined by Mary Johnson, survivor)
Brock
Friday, September 17, 2010, 10:30 AM EST

Customer service has been lacking since the beginning when I started filing SEC petition. I was told that I could attach the SC&A report to my petition, along with worker affidavits, but after I submitted it, I was notified that it wasn't acceptable –I needed to quote excerpts from the report.

The phone call with the health physicists and ORAU was itself adversarial.

I was condescendingly reminded what a critical incident is. There were a couple of incidents that weren't reported by the company. They didn't quite say that we couldn't use them, but they kept trying to define what a critical incident is.

Then I received the denial letter, which didn't even acknowledge SC&A report. It just focused on one sentence in the affidavit.

The sentence said that the workers wore badges, but we were questioning whether the information from the badges was ever recorded or used. One of the affidavits pointed out that that his badge changed color when it was dipped in a solution; they never said anything about it and just gave him a new badge the next day. That wasn't acknowledged in the denial letter.

I don't understand why ORAU or NIOSH wouldn't call a petitioner and ask for clarification. That was confusing. They could call the petitioner and help, saying, "We don't think this is going to work, but here's what you could do."

LaVon believed that they should've worked with us more, so he encouraged them to take a look at the petition again, and we did get it reversed.

There was another petition filed at the same time that they did end up approving and qualifying. I got a letter saying that even though mine didn't qualify, they found other reasons to make it qualify.

The letter didn't say what those reasons were. Just said they would merge it with another.

Very little information given, we were left in the dark about what was going to happen.

It seemed obvious that ORAU was told to find a reason to deny it. Didn't seem like a customer service issue. Otherwise, there's no reason why they couldn't have called us and given guidance to find a solution.

We received a letter saying NIOSH was going to be over the 180 days for completing the evaluation report.

The letters were wordy, not simplistic, not clear. Seemed like they were written in a biased viewpoint. Somebody needs to write these from the viewpoint of a petitioner.

The 180 days was based off of the date the petitions were merged, even though that petition had qualified at least 60 days before it was merged with mine. I'm not sure why the 180 days didn't start then.

These kinds of things aren't explained to petitioners. When we do ask, we don't get a real answer, no real clarification.

When we ask for the status on the petition, while Laurie called us back quickly, I was always given a short, canned answer that sounded like procedure: "I haven't heard anything." Or if I asked for a specific question, I would get a procedural answer: "This is what normally happens." Not my specific answer.

And even the procedural answer wasn't always correct.

If it hadn't been for John Howard allowing Denise to help us, we wouldn't have had contact with LaVon, and I wouldn't have any answers. Mark wouldn't have helped us. LaVon wasn't the lead on our petition, but he helped us. It if wasn't for LaVon along the way, there were certain things we wouldn't have known.

The surrogate data issue came up. Mark says he has real data to replace the surrogate data. We don't know what that data is.

LaVon wasn't privy to that, but he helped us get updates.

There's a lack of communication with the petitioners, no real guidance.
So I have a lack of trust in NIOSH and their ability.

There's nobody to explain the complete process. The basic stuff is on the web, you can look it up. But at the Board meetings, most of the petitioners don't know what the next step is --they don't even know what a Board meeting is, what the protocol is. I know from years of observation and watching Denise.

A petitioner should have someone assigned to them to hold their hand through the process. I know a lot of agencies don't like to hold someone's hand, but this is a very important process. We're talking about workers –even attorneys would have a hard time. A worker deserves better treatment.

Weldon Spring has gotten extremely technical. Something needs to be provided to us, maybe a list of independent health physicists who could consult for free with us. Because of that lack of trust with NIOSH –which is valid and long standing. The [REDACTED] we had helping us –if we didn't have that, we really wouldn't understand.

We had found some documents from a gentleman who had used to work in [REDACTED]. He volunteered to go to the [REDACTED] Board meeting for us—he said this report wasn't ever meant to be used for dose reconstructions, but NIOSH is using it for that. He talked to [REDACTED] the night before, then he called us and told us that [REDACTED] was interested in hiring him. Then he was told that if he works for them, it would be a conflict of interest, so he wouldn't be able to work with us on Weldon Spring any more.

From the claimant side, it looks like they're buying our [REDACTED]: our [REDACTED] is involved, so we can't use them. It looked like they bought our

[REDACTED]. We were assured that his information would be used when they reviewed NIOSH's evaluation.

It went to the work group. If I didn't have Denise –and John Howard didn't allow her—I wouldn't have known that it worked this way. A couple of months went by. We hadn't heard anything. We contacted him, and he was waiting on paperwork. We were told that [REDACTED] would take only 3 months to complete our review, but it had been 2 months and he still hadn't been hired. He had been waiting on paperwork. They had not used his information in our review yet.

There was nobody letting us know these things. Still got the same canned answer from Laurie: "still hadn't heard anything yet."

I contacted John Mauro, and he was very helpful. If you want to know what customer is, go to him. He goes by the guidelines, but he explained the process to me. If I hadn't had his phone number, none of the petitioners would have it. Petitioners who call him can get good service.

It looked like our [REDACTED] was being hung up, and that just didn't look good. At Fernald, they complained about conflict of interest with NIOSH. It was confusing why NIOSH staff can do work on a site even though they had been there in the past, but if a claimant has a site expert, they're not allowed to work on the site if they've ever spoken a word on the claimants' favor.

I wanted to see the information that NIOSH was looking at.

I was getting extremely aggravated. I felt I was sent on a wild goose chase: "If you can find anything on thorium or find proof that it was there, that might be helpful." That was a very basic statement –it's not just any thorium, it was a very specific type of thorium, and it wasn't just about it being there. NIOSH says that if nothing can be found on it, then it wasn't used. The whole point of filing an SEC is because the data wasn't there. It contradicts the whole purpose.

We wanted to file a FOIA request –that was a huge roadblock. I had filed it before and had been asked to refine it because they said that it would be way too many documents. During the petition, I re-filed the request. I was again asked to narrow the search. They said it could take up to two years.

We found it rather curious why they weren't willing to release information to us.

FOIA does not make sense –I'm still not sure about the process. It's not clear which agency you're supposed to send it to or if you're supposed to send it to every agency.

We refined our search --I still don't like it. I did get a packet from NIOSH. They said we could have it within a couple of weeks. I got it a couple of months later –three days prior to the Board meeting.

I don't know if I got everything that I requested –how would I know?

Some of the information wasn't even regarding Weldon Springs, some of it never mentioned Weldon. Some was Mark's information. Three worker interviews from people I've never heard of. None of the workers know who they were. They claimed that the NIOSH presentation interviewed nine people –I got three and haven't seen others. The biggest bulk of the FOIA request was the copy of a book written by a local doctor, which I already have. The bulk was not their documents. I later got a CD which was about 500 documents –and it wasn't necessarily documents that NIOSH had used. That was all we got, and we never heard anything else. I haven't followed up because I was so aggravated the first time. I'm obviously not going to get anywhere.

NIOSH is not being forthcoming with their evidence, so I don't trust it. Again, customer service goes a long way with trust. If they would call and explain why they haven't given me the information, that could go a long way.

I'm told by more than one person at NIOSH that it's beneficial if petitioners can be at meetings in person, whether it's a workgroup or Board. Petitioners are doing this on our own time. It would be helpful if they could pay for something, even if it's just for travel to one Board meeting that you're on the agenda for or a workgroup meeting.

Worker affidavits do not appear to be acknowledged, ever, whether for dose reconstructions or petitions. I've had many people say they've sent multiple affidavits in, but when they talk to the Department of Labor (DOL) or NIOSH, they're basically ignored. I've been told by a NIOSH health physicist that worker affidavits are usually not used, probably because NIOSH claims to use overestimates, so they don't need it I guess, but that's never explained.

Brock: 22 presumptive cancers include brain cancer, but during dose reconstructions, brain cancers rarely get compensated. On the flip side, skin cancer isn't on the list of radiogenic, but often gets compensated. Claimants and petitioners aren't getting a explanation for it.

Johnson: We're told about latency periods for brain cancers, but I've never heard that anywhere else. In all our years of research, it's always been 30 years, so the 5 year latency that NIOSH uses makes no sense.

Jan Lovelace, Claimant and survivor
Tuesday, September 21, 2010, 10 AM EST

Being in the EEOICPA/NIOSH system for nine years, I have encountered all types of problems.

The method for probabilities makes no sense. It seems a set rule that if more cancers are added, the probability will go down. Last year, I wanted to notify NIOSH that we had [REDACTED] and the person answering the phone just told me, "You know that when you file for [REDACTED] that your percentage will go down." I couldn't believe she said that. I told her I certainly hoped not...as the [REDACTED] for [REDACTED] had gone down from the original [REDACTED] to less than [REDACTED].

Most claimants have a problem with the co-worker data being used.

In the beginning, [REDACTED] file was lost for over a year and a half. We sent his file repeatedly to Jacksonville, and it never got processed. When it went to NIOSH, we didn't hear back for over two years.

I think the NIOSH customer service --and their explanations of what they've done-- is very complicated for most claimants. Having worked in a lab, research, and finance, and having had my own pottery business for over 30 years, I call it "legal mumble." Many statements are stated one way in the NIOSH overview and another way further into documents. Very confusing and difficult to accept.

I talked to one HP in all these years -- but then I learned he was not HP, but he did have more knowledge of the sites and jobs and than any other person I talked with. Most of the time, you don't get to talk to the person who did your dose reconstruction. You just talk to the interviewer, and most of them aren't technical people. I had one who you would think was a robot. He'd say "yes," "no," "I do not know" just like a robot: short and abrupt. Could not answer any questions I asked on behalf of [REDACTED] claim.

One concern is misclassification and the lack of acceptance of documents from supervisors and co-workers. [REDACTED] was a [REDACTED] and a [REDACTED]. He carried the [REDACTED] etc. He was a [REDACTED]. Even though we've presented his rad badges, he's classified as a [REDACTED] position. This does not make sense. He was given less probability of exposure than someone who was driving outside the gate –this information was given to me by a high level NIOSH employee back in March 2010. There's no common sense for an employee inside a nuclear site in a [REDACTED] job to be classified as [REDACTED]. Many claimants I know have learned the co-worker data could be any job classification...not theirs. Totally wrong and certainly not claimant friendly as the program is advertised. I doubt any claimant would say that.

In the [REDACTED], we've found [REDACTED] that [REDACTED] worked with that have [REDACTED]. Most are [REDACTED]; two are [REDACTED]; one has

[REDACTED] and he was compensated. [REDACTED] record was lost, and on down the line, he was denied on each of [REDACTED]. His case is still in review after the acceptance of [REDACTED].

The coworker data that NIOSH uses is totally unexplainable to the average claimant. They said the coworker could have been a mechanic on the other end of the plant. It should've been the people that [REDACTED] worked with. Most of them have had [REDACTED]. [REDACTED] had to have a [REDACTED] or he would have had the [REDACTED] like the [REDACTED] have. When you have that many [REDACTED], there's definitely something wrong. The Building 2500 – Fire Hall Bldg- is on the D&D list of contaminated buildings, but employees are still in that building and the other 400 plus buildings to be demolished and destroyed at ORNL (X-10) and Y-12 in Oak Ridge.

We submitted letters from coworkers, [REDACTED] -- and we presented [REDACTED]. NIOSH told me his badges were from [REDACTED], so they couldn't use them. I tried to explain –and they should already know-- that the badges are renewable. They claimed he had [REDACTED] exposure. This refusal to accept data from the workers and supervisors is certainly not claimant friendly and leaves the claimant struggling to accept WHY? Not accepting letters from doctors that actually treated the claimant is also wrong.

[REDACTED] was called in twice in [REDACTED] because [REDACTED] was [REDACTED]. [REDACTED] his day off, he called in ASAP and had stay [REDACTED]. Then he was told it was just a [REDACTED]. When we asked why [REDACTED] were missing (when all others were there), the explanation was given that he did not work a [REDACTED] job in [REDACTED]. THIS IS NOT TRUE. We presented letters, documents, photos, and EE-4s, plus a letter from the [REDACTED] -- all stating [REDACTED] worked a [REDACTED] position. This data has been refused by NIOSH and DOL. And we have asked over and over why is data not accepted from the worker or co-workers or even [REDACTED] in the [REDACTED].

He has cards with numbers written beside them. According to an international HP I got in Atlanta, those cards are illegal because they shouldn't have anything written on them. We also have records from early DOE files showing that zeros (0) mean "not adequately monitored," which is the international standard of recording dosimeter values. Again, this has not been changed by NIOSH or DOL.

An HP who has worked in the plants also has records showing that a zero means they weren't adequately monitored. He is an internationally certified HP. His testimony was not accepted to make changes to our file.

For NIOSH to continue to not accept facts like that is totally wrong for everyone.

The burden for claimants and petitioners is extremely hard. None of [REDACTED] coworkers' statements have been taken into consideration.

They should still give him some percentage showing that he was a [REDACTED], not a [REDACTED] position. You don't get [REDACTED] unless you've been exposed to something. [REDACTED] working the same type of jobs in one department with [REDACTED]...something is definitely wrong.

Claim is on the [REDACTED] . We were finally able to get a DOL doctor to look at it, and he acknowledged that it's [REDACTED] . We were told we would hear back in 30 days because it was the [REDACTED] in the same area, so it would give us [REDACTED] even though NIOSH has lowered the [REDACTED] so much.

It is nearly impossible to access information. I have requested records under FOIA numerous times, and I've yet to get the papers I am asking for and get the same records as before. In the papers I did get, I've received five other people's files. Have asked where are records for [REDACTED]?

DOE tells me they had no records. Well, it's law that they keep records. So DOE has been negligent to obey the law.

[REDACTED] has scant records from [REDACTED] until [REDACTED], although we have a copy of [REDACTED] and his record of employment back to [REDACTED] . But because we didn't know what building he worked in --he just knew what his job was— they don't have anything. This was back before all the safety rules went in at Y12. Y12 has an SEC, but it stopped at 1957. X10 doesn't have an SEC and most have been denied.

Another [REDACTED] was there [REDACTED] years, and he had records for only [REDACTED] years. That's because he asked for his records every year after he realized the dangers in his job. There's a large chunk of information for our claim that is missing. I think it has been destroyed. I worked at ORNL and Y-12 and [REDACTED] in the Metals and Ceramics Division had me shred records. I'm sure I've shredded some of the records that the men and women need right now. When you work in a DOE facility, you do what you are told to do...not realizing the consequences 30 years later.

I think there should be some type of oversight board which checks into our complaints. They had asked me to go to DC last week (Sept 13-15) to talk to the Congress, but I was sick so I couldn't go.

I think the biggest things are: lack of information to the claimant, lack of access to our files, acceptance of data submitted, and the inadequate explanations to the claimants.

I'm capable of understanding anything that makes sense. I've spoken with many claimants, and the DRs do not make sense to most.

I've sat in the hospital with [REDACTED] for months. When denied, he said, "They just slapped me in the face for doing my job." A [REDACTED] is definitely not a [REDACTED] position. I've sent many documents to show that. NIOSH has not

accepted submitted data. His last denial was last October, and then he had only a partial acceptance of his illnesses.

The SEM database is inadequate. I have sheet after sheet on buildings and information. Most of the SEMS database has "none listed," "no known chemicals," etc.

Our last claims examiner has made so many mistakes. I want to get the records that I need that should have been sent in April, along with [REDACTED] Part E.

His suffering was so hard, as it was with so many of claimants. I've met so many people who have cancers and they're fighting the same fight we're fighting. Then I met two people who filled out two pieces of paper, and one got it on [REDACTED] and one got it on [REDACTED]. I met people who because they were on the K25 payroll, even though they worked in an office away from the site, got paid because K25 got an SEC classification. So there's a total injustice on the decisions. An overview board needs to be made on the cases compensated...as an overview board to look at denials.

The burden on the claimants is extremely hard when we can't have access to files.

For DOL or NIOSH to not accept statements from supervisors is wrong. They didn't even accept statements from the [REDACTED]. The [REDACTED] got a letter from the claims examiner, and she said "They questioned my authority and my credentials." My [REDACTED] didn't get involved in any of this because she said in a previous case where she said agents harassed her; they came to her office, questioning her credentials. So she didn't want to put herself or her office through that.

There are a lot of mistakes. I was showing them: "are" instead of "area," "no" instead of "not" –that makes a big difference. Nothing was changed.

I don't know if the survey will help or not...but a change needs to be made in the NIOSH procedures.

COMMENTS FROM JAN LOVELACE –survivor [REDACTED]
REGARDING 10 YEAR REVIEW

In the [REDACTED] years of [REDACTED] claim, many problems have been discovered. Our [REDACTED] is among the first.. filed [REDACTED].

1. Lost Records Nearly 3 years before any progress made on file… as it was lost and resubmitted over 4 times. Among first to file. Later lost 2 other times.

[REDACTED] worked [REDACTED] years at [REDACTED]. NO RECORDS

Worked as a [REDACTED] in ORNL [REDACTED]. for [REDACTED] years, rising from [REDACTED] -- with a scant [REDACTED] years of records - [REDACTED].

2. Long Delays after remands or other [REDACTED] submitted. [REDACTED] file is still at NIOSH after DOL accepted [REDACTED] (which was denied by the Claims Examiner in [REDACTED].

3. Misclassification of Job ---We have submitted numerous letters, along with EE-4s from [REDACTED]… regarding the high exposure to [REDACTED] EVERY day in their jobs.

To have a [REDACTED] declared [REDACTED]is beyond all reasoning and everyone connected with case has agreed.

The [REDACTED]carry [REDACTED] to all vaults, all radiation areas, toxic waste burial grounds, etc. Daily checks were made on all areas.

Being a [REDACTED]the exposure to any spill, accident, or explosion falls on the [REDACTED], etc. as they respond. There is no data to cover these situations and give the proper POC for these men.

[REDACTED]

[REDACTED] were submitted… and NIOSH told us only for [REDACTED].

Case workers do not realize all badges (for all employees) have an expiration date and are renewed if still in the same position. These should have been accepted.

No amount of data, photos, badges, or statements from [REDACTED] and co-workers has been accepted to make a change in records. This is a gross injustice.

The NIOSH/ORAU HPs do not have any idea of the job duties or the buildings in the sites. A site personnel needs to be involved in dose reconstructions

4. NOT ACCEPTING DATA SUBMITTED OR CO-WORKER DATA --- this has been ongoing problem and no change in[REDACTED] years since we learned of the [REDACTED] which was given in [REDACTED]. Lack of knowledge by CEs.

Co-worker data used was not from the [REDACTED]. which is a building on the Demolish/Destroy list since [REDACTED] … and workers are still in the building.

Have been told on several occasions by NIOSH staff that co-worker data could mean a mechanic in other end of site or an office employee. Certainly NOT a valid means of determining that [REDACTED] face.

5. DOSE RECONSTRUCTIONS --- just not done with realistic figures. With HP's not having valid site information, valid job classifications and duties, it is not within their scope to give a valid POC.

The TIME for DRs is very long. Remands that are required by law to be done in a timely matter have often taken 2 years…

6. GETTING INFORMATION & FILES. Nearly impossible. So many files are gone.

[REDACTED] only has scant [REDACTED] years of records with a few scattered other files for [REDACTED] years of work at DOE Facility.

7. LACK OF ACCESS TO INFORMATION: Files can not be accessed. When records can not be obtained the DRs can not be valid….

8. Inadequate information in the SEMS... which is used as a guideline for denials and the SEMS IS INCORRECT by lack of information. No ORNL [REDACTED] was cause of denial for my case. I have now gotten 3 ORNL [REDACTED] classifications accepted.

I was told no buildings in the 6000 area of ORNL. Wrong... as there was 19 buildings on the map.... of buildings to be destroyed in 2007 and 2008.

The Tritium Lab and Vault are in that area and [REDACTED] had a contamination there. [REDACTED] was also contaminated. Of course, no record.

9. CUSTOMER SERVICE -- INTERVIEWERS..... The interviewers only know what they are reading. Only once did I get a man who had knowledge of plant sites and what a [REDACTED] did.

The operator who answered one day told me without any idea of our claim (as does the legal "mumble" of the dose reconstructions) that if I was filing for a [REDACTED] it would make the POC go down.... as it had the other [REDACTED] times. Of course, this does happen... and which not explainable to claimants. The exposure they had was the exposure whether it was for [REDACTED].. or more. The calculations of [REDACTED] should NOT go down.

Lack of knowledge by the HPs... the interviewers and administration has no common sense to the workers on sites.

10. TRUST AND CONFIDENCE IN NIOSH:.... VERY LOW with most claimants and advocates.

The long delays in dose reconstructions -- which are not considered to be fair or correct by most claimants across the nation --- is a big problem.

Claimants nationwide have been denied for various reasons. [REDACTED] in ORNL [REDACTED]. with [REDACTED] (most [REDACTED] now).... is a lot for a [REDACTED]. The ones denied can not understand why some have been compensated and others have not. [REDACTED] .... the men go into nuclear vaults, the nuclear waste burial grounds, all spills, accidents, etc. and not always with protective clothing.

What is your assessment of the quality of service provided to claimants and petitioners, and their representatives. For example, does NIOSH provide information about its technical processes and products in terms easily understood by claimants and petitioners?

No I don't think the NOISH technical processes are explained easily. I have found over the years that the interviewer have no knowledge of the work, nuclear sites, or anything involving the case. Only what they have written in front of them. They had no knowledge of the job classifications.... and when I would ask a question, their answer was "I don't know". I remember one man in particular.... [REDACTED].... he spoke like a robot. Yes, no, no I don't know.. Not my area.... don't know. I finally gave up on him.
I asked some of the original NIOSH people back in 2003 and 2004... and their knowledge as only what they had in front of them.... no idea of answers I needed.

What do you think are a few of the most important aspects of customer service by NIOSH in the program?

I think NIOSH needs people with knowledge to talk with claimants. I never was permitted to talk to an HP.

A few of the other issues raised in the docket were the incorporation of information or comments provided by workers, the burden on claimants and petitioners, and access to information. Do you have suggestions for these or other issues?

I know for a fact that data and information IS NOT included when sent. If it was, [REDACTED] would not have been classified as [REDACTED] as a [REDACTED]. As [REDACTED], they have the VERY MOST possibility of exposure. I was just reading a NIOSH document sent to us..... Absolutely so far off base... and the data was incorrect.

Over 9 years I have sent a tremendous amount of documentation to try to get errors corrected... even in the hearing transcripts... NEVER... NOT once has a correction be made... or even an acknowledgement of the information sent.

When co-worker statements on EE-4s and a [REDACTED] letter is not accepted as a working fact... Something is wrong with the system. This has happened to [REDACTED].

He often stated..."they slap me in the face for doing my job".... He died due to his dedication. He refused to take a [REDACTED] and worked until [REDACTED] forced him into [REDACTED]. He was hurt over and over... just for doing his job. One thing for sure.... our government has not taken responsibility for their lies to the workers..... I was one of them and I have a chronic [REDACTED] disease which hit me at age [REDACTED] while working at the Oak Ridge Lab... and have [REDACTED].... BUT of course, it did not occur because I worked in the cancer lab and the Metals and Ceramics lab.....

The claimants feel like we are spinning of wheels and it is useless to send data... although we have continued to do. [REDACTED] believed with all his heart that he had been exposed - not only daily in the Nuclear Waste burial grounds, but definitely to radiological material in [REDACTED]. As the saying goes, which has been verified by other workers at our hearings.... If you don't have to.. don't report problems. This is plant wide unspoken rule.... I worked in Biology, Metals and Ceramics and Finance Depts. and that is true with all divisions.
[REDACTED] spoke at our last hearing and verified. "Don't tell, don't report..."and it did not happen"....
[REDACTED] reported he was in an [REDACTED] during his early employment (he could not remember the date)... where he found himself standing in a liquid from the [REDACTED].... We have submitted the lists of the buildings and the chemicals/radiological materials he was exposed to over [REDACTED] years.
His early years of [REDACTED] work at [REDACTED] have been given only slight reference (No records)..... but we submitted his original letter from [REDACTED] stating his years of [REDACTED] and how he qualified for any job when there was [REDACTED].
MY BIGGEST PROBLEMS WITH NIOSH:..... Long delays, lost records, unavailable access to file, and the worst..... submitted data from doctors, co-workers, and his [REDACTED] have not been accepted.
Big Question: WHY?

Hugh Stephens, Advocate
Thursday, September 16, 2010, 3 PM EST

I have really tried to understand the dose reconstruction, studied the various guidelines, and I've been able to follow along with the dose reconstructions, especially for the external dose. But the internal dose requires reference to sources that aren't publicly readily available. It costs money to get the measurements and ICRP models --about $200 every time...need one for the lung, then another one for something else...I hired a retired professor in statistics...As an environmental attorney, I run into this type of thing all the time –complicated science I'm not familiar with, and I can generally do that, but I haven't been able to do that in the context of the dose reconstruction.

> Denise had a forum about dose reconstructions and various issues. The health physicist in charge of dose reconstructions readily admitted that we're not going to be able to follow along.

It's a difficult thing, and we're working to find a health physicist that can help us with this. In a normal litigation, people spend hundreds of thousands of dollars. For the $150,000 of this program, there are limits on that.

> That's just kind of part of the program –may not be simple to manage. NIOSH could buy and make available these ICRP models, but they're probably proprietary information...

There should be a method to kind of following along with the dose reconstruction.

Even more important, and more manageable: The citation method is completely inadequate. This is not the kind of citation method that would get you through 5th grade. NIOSH reports say "research indicated..." We need you to show us your work. A lot of this is available on the internet; DOE has websites that provide the documents. So the citation should be "this document, this page." Should give you enough information that if you're willing to do the work, you can find the document. The way the dose reconstructions are written, you can't figure out what they used, and if you do figure it out, it's difficult to pin them down.

> I suspect that one of the biggest challenges for NIOSH is getting these dose reconstructions done, so requiring a reasonable/proper method of citation may be a heavy lift, but it doesn't rise to a level of usefulness.

In one case, they use a 1958 memo available on the DOE website, but the website has only 3 out of the 5 pages, and there are a lot of attachments to the memo that aren't available on the internet. This piece of evidence that has been cited is not available.

The attorney client relationship should be honored even when there is only an advocate. An advocate should be encouraged to participate in the computer assisted telephone interview. I'm not sure if an advocate is even permitted to participate. The disparate level of sophistication with the program between the claimant and the NIOSH representative conducting the interview just leads to abuse. It's not proper. People should be encouraged to understand what's going on when they're describing what they know, and it's just not fair for a NIOSH representative to be asking questions of the claimant without encouraging the participation of an advocate, without any incentive for a claimant to be somehow prepared for the interview.

At least one of [REDACTED] was contacted by NIOSH after I put in my authorized representative notice. NIOSH shouldn't be contacting [REDACTED] without attempting to include me in the conversation.

It's good for the integrity of the program for the advocate to appear as if the advocate is connected with the program and things aren't just happening out of the blue. I think the program benefits from the participation of advocates. The program should acknowledge that the claimant is represented and include the advocate.

It's not that the claimant needs an advocate –though it does— it's that the program benefits from the participation of the benefit. Competent advocates spend as much time explaining to the claimant that the program is being fair. At least I do. People don't understand –they think it's a conspiracy, it's dishonest. Some advocates can help people understand. So I think it's good for the program to make advocates available to people.

The people that are denied need an advocate. You need an advocate to help you manage the situation when you're denied. There's a lot of talk about fishing expeditions --that advocates can search for ways to get people compensated that don't. I don't think that should be the attitude of the program. DOL should make available a list of licensed, certified advocates –it's better if there's no relationship with the program. The program has a tendency to avoid any suggestion that there's a need for an advocate --I think that's probably not necessary. The cost benefit is worthwhile. Now that the fee limits are part of the program's legislation, that's enough to prevent claimants from being taken advantage of.

In terms of customer service: when I put in my authorized advocate form, I usually request the file, and I get the file very quickly. I think that's a very good thing. We don't have to pay for it –that's great. We almost never have to charge clients anything like in a typical personal injury.

Huge issue: incorporation of worker information. Whatever the worker say in the computer assisted telephone interview is ignored by the claims examiner unless it's corroborated in the record. I work with the West Valley facility here in western New York. That facility processes contaminated materials; it's a radioactive waste processing facility. That facility is governed by regulations, and there's an effort by the contractor to comply with regulations --and that need to comply provides the contractor with an incentive to downplay the incidents. So the likelihood that an accident would've occurred that's not record in any detailed way and that an exposure occurred that's not part of the record is extremely significant.

I understand there needs to be some sort of corroboration. That is the problem: NIOSH needs to prevent fraud, so it can't base decisions on the uncorroborated testimony of a worker where that worker is in a position to make things up to allow him/her to qualify. But the record keeping is insufficient, and in a claimant favorable program, exceptions need to be made.

For [REDACTED]: The levels of radiation were determined in documents written in 1958 documents. The 1958 document were written in order to support a decision that no further remediation be performed at the site: they're saying the site is safe so that the government can sell the site. In 1976, there was a document that said that if the site is used in its current state, it's safe. By 1983, everyone agreed the site needs to be cleaned up and is hazardous. By 1998, they actually cleaned it up. So using --or misusing-- the 1958 or 1976 data to prevent a claimant from being compensated is problematic because everyone knows the 1958 report was designed to support a decision that is probably a bad decision.

> The incentive to underestimate a hazard is significant. How you use the report needs to be considered in light of the context, time period, incentives, that the report was written.

That is the situation that NIOSH struggles with, the blanket tendency of NIOSH to ignore testimony of a claimant in the event it is not corroborated by site records should be adjusted.

I have not been on a computer assisted telephone interview, but I intend to be on the next one that my claimant is on. We deal with the claims examiners, who work for DOL. We receive written reports from NIOSH –the dose reconstruction, then when you challenge the dose reconstruction, DOL goes back to NIOSH and ask them to respond to the objections, although they also have health physicists of their own. Our communication with NIOSH tends to be filtered by the DOL claims examiner.

The burden on claimants is significant, but understandable. I don't propose that the burden be shifted under the current program.

We feel like eventually, we'll be able to find a health physicist to help us make compelling arguments to attack the dose reconstruction.

It's a time consuming process to challenge a dose reconstruction. We're probably not going to be successful most of the time. DOL really feels as if though NIOSH has been designated as the entity that will perform dose reconstructions, so there is a great reluctance in DOL to challenge the dose reconstruction.

> I think there's a misunderstanding relative to the statute and regulations. I think it allows DOL to consider misapplications o the methodology by NIOSH. But form a practical point of view, DOL doesn't closely examine a challenge to NIOSH's application of the methodology. I think that's less a misunderstanding than it is a practical difficulty because there's not a simple method for DOL to refuse to adopt a NIOSH dose reconstruction. The regulation that permits DOL to reject the dose reconstruction lacks some sort of a procedural dictate. DOL has health physicists that help DOL explain dose reconstructions, but there's not enough of a structure that allows DOL to reject a NIOSH dose reconstruction –I think that's just a practical reality.

Loretta Valerio, Advocate
Director, New Mexico Office of Nuclear Workers Advocacy
Wednesday, September 15, 2010, 3:30 PM EST

The full CATI isn't used in the dose reconstruction.

If an individual works at a facility that has a spill every day, but the spills aren't large enough to be investigated or reported to DOE, those small, constant exposures should be looked at.

NIOSH has a wealth of information, but could use more of what's provided in the CATI.

There is no consistency with the internal monitoring.

In the CATI Incidents section, some of the incidents weren't sufficient in magnitude to be reported, but they're nevertheless incidents. I don't think they've all been captured in the dose reconstruction reports.

Film badge, TLD, etc. capture exposures; however, not all workers were monitored internally. Los Alamos seemed to have been sporadic.

It's questionable because some facilities have very limited monitoring records. How can dose reconstructions be done if there is not enough documentation from DOE or people weren't consistently monitored?

For [REDACTED] I worked with, his dose reconstruction is very reliant on internal dose, but there is no internal dose record.

Surrogate/coworker data may not be claimant favorable.

The processes are different at different places.

LANL was different from other facilities at NM which didn't do much work with radioactive material.

It makes you wonder how they address the difference.

The CATIs for survivors are difficult, especially survivors who aren't familiar with the facility or the work. Survivors just don't have access to that information, especially if it's classified.

So many workers weren't aware of what they were exposed to. But they know that they were in those areas.

Support services who are very mobile –it wouldn't be uncommon for them to be in 2 or 3 different operational areas within a given day…I'm not sure how that affects the dose reconstruction…

At the end of the CATI, when they're asked for names of coworkers: I've never heard of any coworkers being contacted. I would like to see them do that, especially for the elderly who don't remember. It would be good to contact coworkers or others who work in the same general areas. Maybe NIOSH does that, and I just don't know about it.

I've gone to the workshops, Board meetings, met with the people from NIOSH. They've been very cooperative and helpful. Every time I've talked to staff, personnel at NIOSH,

they have all been very, very helpful. Very thorough in explaining things and responding.

Some dose reconstructions are processed in a few weeks, so it makes you wonder why some take years. Seems like they're either taking too long or not enough.

There are problems with the information reported by DOL to NIOSH: wrong type of cancer, etc

> I would like for claimants to be able to give information directly to NIOSH (and copy DOL) so it can be faster instead of having to channel everything through DOL.

If there's more than one cancer, maybe NIOSH could contact claimant to follow up, instead of DOL.

I don't know the cost of doing a dose reconstruction. It's a little confusing that every time an individual is diagnosed with a new condition, they have to go through a new dose reconstruction. It doesn't seem cost effective.

It's confusing to claimants when they claim multiple cancers and the probability of causation drops, some times dramatically. Needs to be changed. What are the chances that you'll get 3 or 4 or 6 or 8 different cancers…It doesn't seem logical that the more cancers you get, the lower your POC…

> Very hard to explain to someone if there's a change in methodology or a TIB, they send back for a second dose reconstruction, then the POC falls…I don't understand how significant those change would be that the POC would drop by such a high percentage.

If individual wants a copy of whatever was used to do their dose reconstruction, there shouldn't be any privacy issues since it's part of their claim file.

> It has to go to DOE to be declassified and takes an act of Congress to get the information.

The dose reconstruction reports are lengthy and language can be very overwhelming to read. They're technical documents, so I know that this may be unrealistic.

For the most part, I believe that people understand the dose reconstruction process.

SEC decisions should be made in a more timely manner.

> I understand there's a lot of reading, research involved. But usually, petitioners have it pretty well documented that people were not monitored. The SEC process seems to take a long time, depending on how in depth the petition is…
> I'm inclined to believe that we'll have so many SECs in the evaluation process that they'll have to make them presumptive –which I don't think they'll do…

If someone didn't work within the timeframe of the cohort, the cut off dates of the cohorts is confusing to claimants.

Listening to the health physicists, industrial hygienists from NIOSH at the dose reconstruction workshops, renal cancer seems to be a radiogenic cancer, but if they don't fall within the SEC timeframe, then those renal cancers are denied. If the claimant has a letter from a physician saying that it's a work-related cancer, then NIOSH should at least address the letter from the physician.

Laurie was absolutely wonderful in explaining the SEC process, and Denise Brock has been a big help.

I don't think that NIOSH has any input on the cancers covered by the SEC, but there are a couple of cancers I would like to see added. Maybe if there's new information, those SECs can be processed in a more timely manner.

I understand they're looking at it from a scientific point of view.
As an advocate, I feel that for the older claims that are still in process, if new information surfaces on these facilities, an SEC makes it so much more claimant favorable for the worker or the survivor.

In the Four Corners area, there's concern about how the dose reconstruction for the uranium workers are being performed. I would like to see the uranium workers having their own cohort.

Again, as far as them explaining to us the process and being available to assist petitioners, they've been wonderful.

Anthony Windisch, Claimant
Wednesday, September 22, 2010, 2:00 PM EST

1st 9 yrs experience has been great. The last 9 months has been hell.

Thanks to the encouragement and leadership of Denise Brock, I got involved early. I was fortunate enough to participate in many Board meeting.

I had a personal interview with Dr. Makhijani, who seemed to be very concerned and was very helpful. In an interview, he informed me that my medical and radiation exposure records were very thorough. He recommended that I obtain a copy of my records, which I did. During a subsequent telephone conversation, he said he thought my radiation exposure records were rather high.

During the last year, I filed a claim with the Energy Employees Compensation Resource Center in Paducah, KY. The friendly, effective, and thoughtful processing of my claim and physical was the best service possible.

On the other hand, my experience with NIOSH has been polite, businesslike, and dreadful. Beginning with the receipt of my NIOSH dose reconstruction on December 19, 2009, my continuing conversations with NIOSH have been evasive, non committal, and I thought a male representative was rude in his comments.

There seemed to be no effort to understand my problem. My problem is this: On the signed form to acknowledge receipt of my December 19, 2009 dose reconstruction, I attached a hand written statement:

> "To whom it may concern:
>
> The 2009 NIOSH dose reconstruction [for claim number] is completely false because it contradicts a prior ORAU team dose reconstruction [for NIOSH claim number] conducted by Dr. Betsy Ellis dated June 23, 2005."

When my case was sent to DOL, I spoke with several individuals. Annette Pelton called me and said she could not locate any record of the June 23, 2005 dose reconstruction by Dr. Betsy Ellis. I then faxed to Annette Pelton a six-page copy from my file. On September 3, 2010, I was notified, "Please note that you must contact NIOSH directly with your concerns."

On September 8, 2010, I sent by registered mail to Stuart Hinnefeld, Acting Director, NIOSH, with carbon copies to Senator Bond and Denise Brock. My cover letter said: "Please include this in the review of my dose reconstruction." I have not received any confirmation from Mr. Hinnefeld that he has received my correspondence.

I've been fighting since December 19, 2009, to have somebody answer my question of why the 2009 dose reconstruction contradicts the 2005 dose reconstruction. That complaint has been on the record since December 19, 2009.

For the last nine months, I have been frustrated that nobody has dared to review my complaint. Why did they use a temporary dosage for my dose reconstruction rather than using my actual records?

Kathy Wolf, Claimant and survivor
Thursday, September 23, 2010, 10:30 AM EST

[REDACTED] passed away a year and a half ago. We had submitted his claim back in 2002. We did the initial telephone interview back then, obviously with someone who didn't have a clue about the kind of work we did. We got the telephone interview report back; it had lots of errors, so we had to get it corrected. There was a lot of time wasted.

It had included a list of people to contact. To date, none of the people we put down as contacts have ever been contacted. When I redid the claim after he passed away, it had me give a list of people again. Nobody has ever been contacted. When I asked about it, they said, "We only contact them if we need to." Then why ask? I'm curious to know how often they contact anybody that people have put down.

We had somebody –an operator who worked for [REDACTED]– write a letter on our behalf on the kind of work that [REDACTED] did. One of our concerns is that he was a [REDACTED]. I know that for Part E, a lot of the things that you were exposed to dropped out of the list if you say, "[REDACTED]." [REDACTED] put on a [REDACTED] and walked back and made sure his team was doing the work correctly; he had incidents at [REDACTED] where he had to be [REDACTED]. We're not sure the kind of hands on work he did was taken into account.

In the interview, you go through the potential isotopes you were exposed to. We could do that fairly well as engineers, but if you were an operator or a spouse who never worked in the industry, how would you have a clue?

There's a lot of up front paper work that wasn't ever used. If they aren't going to use them, why bother? They ask for names, phone numbers, bosses, etc…a lot of the things took a lot of time, back & forth in the telephone interview…they probably never used. Only ask for the information that you need.

There was a lot of wasted time where we got repeated status reports that were of no value.

When [REDACTED] passed away, I had to reapply [REDACTED] for Part B. (That's an overall EEOICPA problem)

We probably had [REDACTED] dose reconstructions which had to be redone. We just now got the letter from DOL saying that they're denying his claim.

Every time they did the dose reconstruction, the chances went down. They said, "We're getting better at it," but it seems fishy.

You can never get a straight answer.

One of my criticisms is that you can't ever criticize their model. We were working with an epidemiologist [REDACTED] who was working with NIOSH to revise the IREP model, which treats brain cancer the same as the rest of the nervous system. But they haven't changed the

model. They just keep saying that by their regulations, they have to use that model. And we can't criticize the model. That's always off the table. Unfortunately, the epidemiologist who was working with NIOSH also passed away. Nothing has happened.

There needs to be more transparency on the model and how it works. If there's evidence the model is inadequate, they should take steps to adjust it.

It was very difficult for [REDACTED] because of the [REDACTED], he had a rough time reading and writing. There wasn't a disable-friendly process. If I wasn't there, he wouldn't have been able to work through phone trees or understand the pages and pages of dose reconstruction reports and the response deadlines. That's probably sort of unique to people with [REDACTED]. It would help to have a contact who could sort of walk you through these things if you do have disabilities or somehow take into account people who have reading and writing disabilities. Right now, that's not taken into account. I'm an engineer, I worked in the industry, so it wasn't that difficult to understand the information. But to call and ask questions, you had to go through a phone tree, and he had trouble doing that on his own. There wasn't just one phone number to call where he would be connected with a person. I would always have to be there to help him on the phone and help him write response letters.

The burden of proof is always on the person submitting the claim. It's always, "Do you have more information?" The last [REDACTED] years he worked in the industry, he was at [REDACTED]. The site has been destroyed; there is no information. Unless we kept stuff, how would you know? It's a backward way of doing things: individuals don't usually keep dose records and things like that.